MONTANA LEGISLATIVE HISTORY

Chapter 358 1981

Bill H _____ S 212 Original bill & history ✓ C

H. Committee on Human Services			S. Committee on Public Health Welfare & Safety		
Hearing Date(s)	Mar 11	✓ C	Hearing Date(s)	Jan 28	✓ C
		C		Jan 30	✓ C
		C		Feb 02	✓ C
		C		Feb 04	✓ C
Date Out	Mar 20	✓ C		Feb 04	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 212

INTRODUCED BY HAGER

BY REQUEST OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

January 20, 1981	Introduced and referred to Committee on Public Health, Welfare and Safety
	Fiscal note requested.
January 26, 1981	Fiscal note returned.
February 9, 1981	Committee recommend bill do pass as amended. Report adopted.
	Statement of intent attached.
February 10, 1981	Bill printed and placed on members' desks.
February 11, 1981	Second reading, pass consideration.
February 12, 1981	Second reading, do pass.
February 13, 1981	Correctly engrossed.
February 14, 1981	Third reading, passed. Ayes, 48; Noes, 1. Transmitted to House.

IN THE HOUSE

February 16, 1981	Introduced and referred to Committee on Human Services.
March 21, 1981	Committee recommend bill be concurred in as amended. Report adopted.

March 28, 1981	Second reading, concurred in as amended.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in as amended. Ayes, 92; Noes, 6.

IN THE SENATE

April 1, 1981	Returned from House with amendments.
April 3, 1981	Second reading, amendments concurred in.
April 6, 1981	Third reading, amendments concurred in. Ayes, 49; Noes, 0. Sent to enrolling.
	Reported correctly enrolled.

INTRODUCED BY Hager BILL NO. 212

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROGRAM OF HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214, 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS 75-10-211 AND 75-10-225, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-202, MCA, is amended to read:

"75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of ~~hazardous~~ wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible."

Section 2. Section 75-10-203, MCA, is amended to read:

"75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste ~~or-hazardous-waste~~ into or onto the land so that the solid waste ~~or--hazardous--waste~~ or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

~~(4)--"Hazardous-waste"-means-any-waste--or--combination of---wastes--of--a--solid,--liquid,--contained--gaseous,--or semisolid-form-which-may-cause-or-contribute-to-an--increase in--mortality-or-an-increase-in-serious-illness,-taking-into account-the-toxicity--of--the--waste,--its--persistence--and degradability--in--nature,-its-potential-for-assimilation-or concentration--in--tissue,--and--other--factors---that---may otherwise--cause--or--contribute-to-adverse-acute-or-chronic effects-on-the-health-of-persons-or-other-living--organisms. Hazardous--wastes-include-but-are-not-limited-to-those-which are-toxic,--radioactive,--corrosive,--flammable,--irritants, strong--sensitizers,--or--which--generate--pressure--through decomposition,-heat,-or-other-means,--excluding--wood--chips

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~~and-wood-used-for-manufacturing-or-fuel-purposes.~~

~~(5)--"Hazardous--waste-management"-means-the-management of-the-storage,-transport,-treatment,--recycling,--recovery, or-disposal-of-hazardous-wastes.~~

~~(6)~~(4) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(7)~~(5) "Resource recovery" means the recovery of material or energy from solid waste.

~~(8)~~(6) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(9)~~(7) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

~~(10)~~(8) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ~~hazardous-wastes;~~ ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts

and inert materials. "Solid waste" does not mean municip sewage, industrial wastewater effluents, mining wast regulated under the mining and reclamation laws administere by the department of state lands, slash and forest debri regulated under laws administered by the department c natural resources and conservation, or marketable woo byproducts.

~~(11)~~(9) "Solid waste management system" means a syste which controls the storage, treatment, recycling, recovery or disposal of solid waste.

~~(12)~~(10) "Storage" means the actual or intende containment of wastes, either on a temporary basis or for period of years.

~~(13)~~(11) "Transport" means the movement of wastes fro the point of generation to any intermediate points an finally to the point of ultimate storage or disposal.

~~(14)~~(12) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it **nonhazardous,** safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 3. Section 75-10-204, MCA, is amended to read:

"75-10-204. Powers and duties of department. The department shall adopt rules governing solid waste

management systems which shall include but not be limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered; and

~~(5)--procedures-and-requirements-for-the-submission--of reports--on--the--operation--and--maintenance-of-a-hazardous waste-disposal-site,-the-transport-of-hazardous--waste,--and the-generation-of-hazardous-wastes;-and~~

~~(6)~~(5) any other factors relating to the sanitary disposal or management of solid wastes."

Section 4. Section 75-10-212, MCA, is amended to read:

"75-10-212. Disposal in unauthorized area prohibited -- exception. (1) No person may dispose of solid waste ~~or transport-hazardous-waste~~ except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage,

dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public recreational property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent."

Section 5. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions -- exceptions to exclusions. (1) ~~(a)~~ This part may not be construed to prohibit a person from disposing of his own solid waste, ~~--except--hazardous waste,~~ upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

~~(b)--A--person--may-dispose-of-his-own-hazardous-wastes upon-land-owned-or-leased--by--that--person--or--covered--by easement--or--permit--after--complying--with--the--licensing requirements-of-this-part-and-the-rules-adopted-to--regulate~~

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~~the-disposal-or-transport-of-hazardous-wastes.~~

~~(c)~~(2) The exclusion contained in subsection (1)~~(a)~~ of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

~~(2)--The--licensing--requirements--of--this-part-do-not apply-to-the-transportation-of-marketable--hazardous--wastes to-a-manufacturing-or-processing-center.~~"

Section 6. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or ~~hazardous--waste,~~ operate a solid waste management system~~,-or-transport-hazardous--waste~~ without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require."

Section 7. Section 75-10-232, MCA, is amended to read:

"75-10-232. Penalty for violations. (1) ~~(a)~~ A person

violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

~~(b)--A--person--who--stores,--treats,--transports,---or disposes--of--a-hazardous-waste-in-violation-of-this-part,-a rule-adopted-as-authorized-by-this-part-or-an-order--issued as--provided--in--this-part-is-subject-to-a-civil-penalty-of not-more-than-$25,000.~~

(2) Each day upon which a violation occurs is a separate violation."

NEW SECTION. Section 8. Short title. [Section 8 through 28] shall be known and may be cited as the "Montana Hazardous Waste Act".

NEW SECTION. Section 9. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of such facilities are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of [sections 8 through 23] and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or

unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

NEW SECTION. Section 10. Definitions. Unless the context requires otherwise, in [sections 8 through 28] the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for

treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under [sections 8 through 28].

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

(b) Hazardous wastes include but are not limited to those wastes which are ignitable, corrosive, reactive, toxic, radioactive, or infectious.

(8) "Hazardous waste management" means the management of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

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(9) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(10) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(11) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(12) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(13) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

NEW SECTION. Section 11. Powers of department. (1) The department may:

(a) administer and enforce the provisions of [sections 8 through 28], rules implementing [sections 8 through 28], and orders and permits issued pursuant to [sections 8 through 28];

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private.

(2) The department shall integrate all provisions of [sections 8 through 28] with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under [sections 8 through 28] with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the

department of natural resources and conservation. Such integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of [sections 3 through 28] and the other laws referred to in this section.

NEW SECTION. Section 12. Administrative rules. The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(1) identification and classification of those hazardous wastes subject to regulation and those that are not;

(2) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(3) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(4) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities and the assessment of permit fees for these facilities;

(5) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(6) requirements for training of facility personnel

and for financial assurance of facility owners and operators;

(7) requirements for registration of generators and transporters; and

(8) other rules which are necessary to obtain and maintain authorization under the federal program.

NEW SECTION. Section 13. Permits. (1) No person may construct or operate a hazardous waste management facility without first obtaining a permit from the department for such facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and shall be subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the

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rules applicable to such facility and in compliance with the provisions of [sections 8 through 28] and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of [sections 8 through 28]. Any person who is denied a permit by the department or who has such permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of such denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of [sections 8 through 28], the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Such emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate,

grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

NEW SECTION. Section 14. Concurrent permit and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in [section 10], the department shall conduct its review under the provisions of [sections 8 through 28] concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of [section 13] is appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit and the provisions of [sections 8

through 28] shall be conducted pursuant to the procedures and enforcement provisions established in [sections 8 through 28].

NEW SECTION. Section 15. Variances -- renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of [sections 8 through 28] or any rule adopted under [sections 8 through 28]. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for

a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be made in the manner and upon such notice as specified in rules promulgated under [sections 8 through 28]. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of [section 22].

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement

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or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

NEW SECTION. Section 16. Compliance monitoring and reporting. The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with [sections 8 through 28], rules adopted under [sections 8 through 28], any order of the board or department, and permit conditions. The department may require the owner or operator of a facility to submit reports on such compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under [sections 8 through 28], the provisions of [sections 8 through 28], or any orders of the department or board.

NEW SECTION. Section 17. Inspections -- sampling. (1) An employee or agent of the department, at any reasonable time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation or any property, premises, or place at which records pertinent to such hazardous waste activities are maintained. The employee or agent of the department may have access to and may copy

any records relating to such hazardous wastes for the purposes of developing rules under [sections 8 through 28] or enforcing the provisions of [sections 8 through 28], rules adopted under [sections 8 through 28], or a permit or an order issued under [sections 8 through 28].

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any wastes, including samples from any vehicle in which wastes are transported, or samples of any containers or labeling for such wastes. If the employee or agent of the department takes a sample of any hazardous waste or suspected hazardous waste he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

NEW SECTION. Section 18. Hazardous waste site inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste

constituent at any such site may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that no owner or operator is able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in [section 17].

NEW SECTION. Section 19. State hazardous waste facilities. The department may, if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes. The department may acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility. Such a facility may be operated and maintained by

the department directly or through agreement with public or private persons. A state facility must meet all applicable requirements for a hazardous waste management facility under [sections 8 through 28].

NEW SECTION. Section 20. Administrative enforcement. (1) When the department believes that a violation of [sections 8 through 28], a rule adopted under [it], or a permit provision has occurred, it may serve written notice of the violation by mail on the alleged violator or his agent. The notice must specify the provision of [sections 8 through 28], the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after

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hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under [section 21], [section 24], or [section 25].

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

NEW SECTION. Section 21. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, MCA, to:

(1) immediately restrain any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment; or

(2) enjoin a violation of [sections 8 through 28], a rule adopted under [it], an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit.

NEW SECTION. Section 22. Imminent hazard. Upon

receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or take such other action as may be necessary.

NEW SECTION. Section 23. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved hazardous waste disposal. The order shall direct the person to clean up and remove the waste, treat it so as to render it nonhazardous, or to take such other actions as may be considered reasonable by the department.

NEW SECTION. Section 24. Civil penalties. (1) Any person who violates any provision of [sections 8 through 28], a rule adopted under [it], an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Any civil penalty collected under this section is in lieu of the criminal penalty provided for in [section 25].

(3) Action under this section does not bar enforcement of [sections 8 through 28], rules adopted under [it], orders of the department or the board, or permits by injunction or other appropriate remedy.

(4) Money collected under this section shall be deposited in the state general fund.

NEW SECTION. Section 25. Criminal penalties. (1) Any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false statement or representation in any application, label, manifest, record, report, permit, or other document filed or maintained as required by the provisions of [sections 8 through 28] or rules made under [it] is subject to a fine of not less than $10,000 for each violation or imprisonment for no less than 6 months, or both. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of [sections 8 through 28], rules made under [it], orders of the department or the board, or permits by injunction or other appropriate remedy.

(3) Money collected under this section shall be deposited in the state general fund.

NEW SECTION. Section 26. Department designated agency for federal program participation -- interstate cooperation. (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after [the effective date of this act] to assist in the management of hazardous wastes.

(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and

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procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of [sections 8 through 28] and may carry out the agreements.

NEW SECTION. Section 27. Venue for legal proceedings. All legal proceedings affecting hazardous waste management facilities in the state shall be brought in the county in which the facility is located.

NEW SECTION. Section 28. Construction in event of conflict -- remedies cumulative. (1) The provisions of [sections 8 through 28] and rules promulgated pursuant to [it] govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in [sections 8 through 28] are cumulative with other remedies provided by law.

NEW SECTION. Section 29. Existing rules, orders, permits, legal proceedings. (1) All existing rules of the department not inconsistent with the provisions of this act relating to subjects embraced within this act remain in full force and effect until expressly repealed, amended, or superseded by the department.

(2) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this act remain unimpaired and in full force and effect until superseded by actions taken by

the department under this act.

Section 30. Repealer. Sections 75-10-211 and 75-10-225, MCA, are repealed.

-End-

47TH LEGISLATIVE SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB 37	1-5	1-14,19	1-19	1-19					
SB 65	1-6	PICKED UP BY JEAN FALLAN ON 1-8							
SB 73	1-8	1-14,19	1-19			1-19			
SB 127	1-15	1-21,26	1-26			1-26			
SB 129	1-15	2-6,20	2-20			2-20			
SB 137	1-15	2-4,11 1-28,	2-11			2-11			
SB 193	1-20	1-26,2-20	2-20	2-20					
SB 195	1-20	1-26,2-20	2-20			2-20			
SB 212	1-21	1-30,2-4	2-4			2-4			
SB 228	1-22	1-30.2-4	2-4			2-4			
SB 230	1-23	1-28,2-2	2-2	2-2					
SB 241	1-23	2-2,4	2-4	2-4					
SB 251	1-26	2-2,9	2-9		2-9				
SB 310	1-29	2-4	2-4			2-4			
SB 314	1-29	2-6,20	2-20	2-20					
SB 332	1-30	2-6,20	2-20		2-20				

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY
MONTANA STATE SENATE

JANUARY 28, 1981

The meeting of the Public Health, Welfare & Safety Committee was called to order by Chairman Tom Hager on Wednesday, January 28 at 1 p.m. in Room 410 of the State Captiol Building.

ROLL CALL: All members were present. Kathleen Harrington, Staff Researcher, was also present.

Many visitors were also in attendance. (See attachment.)

Chairman Hager then turned the meeting over to Senator Matt Himsl, vice chairman.

CONSIDERATION OF SENATE BILL 230: Senator Tom Hager of Senate District 30, sponsor of Senate Bill 230, gave a brief resume of the bill. This bill is an act to allow physical therapists to evaluate without referral. Senator Hager stated that SB 230 is a much needed and good bill.

Jan Delaney, President of the Montana Chapter of American Physical Therapy Association, stated that the intent of SB 230 is to allow registered physical therapists to evaluate patients without prior referral from a physician. The bill in no way implies treatment. Actual treatment of a patient would still necessitate prior referral from a physician. (Attach.)

Charlene Dalbec, vice president and legislative chairman of the Montana Chapter of the American Physical Therapy Association, stated that since the enactment of Public Law 94-142 the scope and magnitude of physical therapy services in educational enviroments has increased. This law mandates that related services which may be required to assist a handicapped child to benefit from special eduation shall be available. Physical therapy is a related service. In the educational setting, the physical therapist is the only member of the Child Study Team who requires prior physician contact. (See attachment.)

Bob Demming, Assistant Superintendent of the Montana State, School for the Deaf and Blind, stated that his group see children from all across Montana for evaluation in the Child Study Team Process. Presently their physical therapist is the only team member who must contact a doctor before he/she can even look or discuss a child. (See attachment)

Jerome Connolly the the Montana Physical Therapist Association stated that he is a practicing R. P. T. in Billings who travels to several rural communities on a once weekly or once a month basis. His associate travels to Glendive to consult once every two months. Due to various problems, the required referral may not always be received prior to their trip. This can result in considerable delay, even up to two months, in the implementation of valuable services and could perhaps lead to considerable det-

Mr. Selser stated that the food services department could train the managers and owner/operators of the homes who would in turn train their personnel.

There are approximately 65 homes in the state and approximately 8 or less people in the homes.

Senator Kimsl stated that inspections give a false sence of security. And that he would like to see inspections by fire marshalls and the local government on a yearly basis. Training can be more demanding than inspections.

Senator Johnson closed with a brief statement regarding the bill and asked for the support of the Committee on this bill.

ANNOUNCEMENTS: The next meeting of the Committee will be on Friday, January 30, 1981 at 1 p.m. to consider Senate Bill 212 and 228.

ADJOURN: With no further business the meeting was adjourned.

CHAIRMAN, TOM HAGER

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MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE
MONTANA STATE SENATE

JANUARY 30, 1981

The meeting of the Public Health, Welfare & Safety Committee was called to order by Chairman Tom Hager on Friday, January 30, 1981 at 1:00 p.m. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Senator Johnson and Senator Halligan who were excused. Kathleen Harrington, staff researcher, was also present.

Many visitors were in attendance. (See attachment.)

Senator Hager then turned the meeting over to Vice Chairman Matt Himsl, who chaired the meeting.

CONSIDERATION OF SENATE BILL 212: Senator Tom Hager of Senate District 30, sponsor of Senate Bill 212, gave a brief resume of the bill. This bill is an act providing a program of hazardous waste management seperate from the non-hazardous solid waste management program in Montana. Senator Hager stated that this bill was introduced at the request of the Department of Health and Environmental Sciences. This would enable the state to have someone closer to home instead of the federal government to answer questions and problems relating to hazardous solid waste disposal.

Bob Adams, attorney for the Department of Health and Environmental Sciences, stated that Congress, through enactment of the Resources Conservation and Recovery Act of 1976, has given the states the choice of establishing hazardous waste programs approved by the federal government and operated by the states themselves or of allowing the Environmental Protection Agency to operate the program without state involvement. Montanans will have a hazardous waste program; the question is whether that program will be operated from Denver and Washington by EPA or by DHES on behalf of the Montana Legislature. DHES seeks legislative approval of the proposed Montana hazardous Waste Act in order to obtain a program equivalent to the federal program, yet approved for operation by the State of Montana. Hazardous waste regulation is already an accepted idea in Montana. The present code contains the foundation of our hazardous waste program in the Montana Solid Waste Management Act. The present law will prove sufficient to bring Montana interim authorization to operate its hazardous waste program for approximately two more years in lieu of an EPA operated program. Senate Bill 212 will accomplish two purposes. First, it will seperate all authority relating to hazardous waste from 75-10-201, MCA, and consolidate it into a new act and part of the code. Secondly, it will sufficiently adjust and clarify DHES' rulemaking authority to allow the Department to bring its program into full equivalency and consistency with EPA's program. When this is accomplished, Montana will move from interim authorization to full and final approval from EPA to run its own program. Montana will then solely administer the permitting, regulating, and enforcing.

Bob Helding, lobbyist for the Montana Wood Products Association, stood in support of the bill.

Ben Havedahl from the Montana Motor Carriers stated that this bill reguires use of a manifest. His group would like to have uniform manifest.

Brinton Markle, of the Montana Railroad Association, stated that his group generally supports the Departments efforts for state control of hazardous waste management. Montana can and should do a better job and has more at stake to do so. Minor amendments to Senate Bill 212 would bring the bill more in line with applicable federal rules and regulations. Mr. Markle then stated that his group would be happy to submit amendments, if the committee so desires.

Don Allen of the Montana Petroleum Association stood in support of the bill. He stated that Senate Bill 212 would resolve some of his association's former concerns.

Pat Stuart of the Montana Coal Council stated that she wished to offer some amendments for the Committee's consideration which would establish a statuatory guarantee that rules adopted by the state in regulating hazardous waste would be no more stringent that those imposed by the federal government. If the amendments are not adopted they would oppose the bill. The handling and management of hazardous waste is a highly technical and potentially dangerous activity for which many rules specifying technical requirements at the federal level have just this week been made available for review. A state program equivalent to the federal program which this bill seeks to establish would regulate 361 substances for four different characteristics. Experts in the industry consider this to be one of the most complex of all regulatory areas. Once the state has assumed the financial and regulatory burden of the program, some portions of the state authority are still subject to review and override by the EPA. (See attachments.)

Senator Hager read a letter from Wilson representing MONTCO Coal Co., Mr Wilson's letter stated that MONTCO is in full support that the Montana State Department of Health and Environmental Sciences have full charge of the hazardous waste program and the revamping of the solid waste laws. The benefit of having the program based in Helena rather than the Denver EPA office will be invaluable in time saved by industry.

Lucy Brugger representing herself stood in support of the bill.

With no further proponents, Senator Himsl called upon the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Himsl asked if the department already receive funding from the federal government and was told yes this is the case.

Senator Himsl asked about manifest. Mr. Havedahl that on page 13 line 21 this tries to coordinate. Mr. Roger Thorvilson from the Solid Waste Management Bureau and also the Department of Health stated that the bill does not require a uniform manifest. The EPA is going to develop a uniform manifest.

Senator Norman asked that on page 10 lines 19 and 20, what constitutes medical radioactive material. This is already covered by the Atomic Energy Act.

Senator Hager closed by saying that this would enable the management of hazardous waste material disposal to be handled in Helena by people who would understand problems of Montana. Senator Hager then asked for favorable consideration from the Committee.

Senator Himsl turned the meeting back over to Senator Hager.

CONSIDERATION OF SENATE BILL 228: Senator Pat Regan of Senate District 30, sponsor of Senate Bill 228 gave a brief resume of this bill. This bill is an act to amend laws realting to foster care by clarifying financial responsibility for payment, to require court review of children in foster placements through a foster care review committee. This bill was introduced at the request of the Department of Social and Rehabilitation Services.

This bill is for permanency planning for children in foster care and to direct the department to continue its efforts in this area. This bill is intended to encourage reduction of the number of children in foster care; to free the children for alternate permanent placements; thereby assuring the appropriate utilization of public funds and that the best interest of the children in placement in Montana are being met by the department's program. Senator Regan offered some small amendments. (See attachment)

Norma Vestry, chief of Social Services Bureau of the Department of Social and Rehabilitation Services, stated that Department of SRS requested introduction of this bill as an attempt to solve two major problems in the foster care system. One is a fiscal problem and the other involves the well-being of the children in foster care themselves. The fiscal problem, there are 900 children in foster care most are placed by the

SENATE BILL NO. 212:

Introduced by Senator Tom Hager at the request of the Department of Health and Environmental Sciences.

An Act Providing A Program of Hazardous Waste Management Separate from the Non Hazardous Solid Waste Management Program in Montana; Amending Sections 75-10-2-2 through 75-10-204, 75-10-212, 75-10-214, 75-10-221, and 75-10-232, MCA; and Repealing Sections 75-10-211 and 75-10-225, MCA.

The bill separates the existing hazardous waste statutes from the solid waste statutes. It sets up a new part which is known as the "Montana Hazardous Waste Act". This part establishes a program of regulation affecting the generation, storage, transportation, treatment, and disposal of hazardous wastes. It provides for administrative enforcement through notification of violations, a hearing process, injunctions, clean up orders, civil and criminal penalties. The Department of Health is designated as the official agency for the state to administer a hazardous waste program pursuant to the Federal Resource Conservation and Recovery Act of 1976 (42 V.S.C. 6901 through 6987, as amended).

Comments of the Department of Health and Environmental Sciences Explaining and in Support of SB 212:

Congress, through enactment of the Resource Conservation and Recovery Act of 1976 (RCRA), has given the states the choice of establishing hazardous waste programs approved by the federal government and operated by the states themselves or of allowing the Environmental Protection Agency (EPA) to operate the program without state involvement. In short, Montanans will have a hazardous waste program; the question is whether that program will be operated from Denver and Washington by EPA or by DHES on behalf of the Montana Legislature. DHES seeks legislative approval of the proposed Montana Hazardous Waste Act in order to obtain a program equivalent to the federal program, yet approved for operation by the State of Montana.

"Hazardous waste" is broadly defined in SB 212 to match the realities of the times: it encompasses those wastes which cause or significantly contribute to increased mortality or serious illness, or which present substantial threats to human health or the environment. The bill meets the need to control the full range of hazardous waste processing in Montana, from the generation of wastes through their transportation to final containment by treatment, storage and disposal.

Hazardous waste regulation is already an accepted idea in Montana. The present code contains the foundation of our hazardous waste program in the "Montana Solid Waste Management Act," 75-10-201, MCA, et seq. Extensive administrative rules have been adopted in MAR Title 16, Chapter 44 which promulgate the hazardous waste statutes existing within the Solid Waste Management Act. The present law and regulations, in fact, will prove sufficient to

bring Montana "interim authorization" to operate its hazardous waste program for approximately two more years in lieu of an EPA-operated program.

As the proposed Statement of Legislative Intent shows, SB 212 will accomplish basically two purposes. First, it will separate all authority relating to hazardous waste from 75-10-201, MCA, et seq. and consolidate it into a new act and part of the code. Second, it will sufficiently adjust and clarify DHES' rulemaking authority to allow the Department to bring its program into full equivalency and consistency with EPA's program. When this is accomplished, Montana will move from interim authorization to full and final approval from EPA to run its own program. At that point, Montana will solely administer the permitting, regulating and enforcing. It should be noted that we are close to having the necessary authority at present. SB 212 adds authority to make inspections of and take samples from generators of waste, and includes them as subjects of the enforcement authority. A variance procedure is established, and definitions have been adjusted to coincide with federal law. The bill gives authority to require certain packaging and marking of wastes by generators.

The rules which have already been adopted in MAR Title 16, Chapter 44 are the equivalent to and no more restrictive than the corresponding federal regulations. Some of Montana's regulations adopt EPA rules by reference. As declared in the proposed Statement of Intent, the Department is seeking a program which is equivalent to EPA's and which is no more restrictive. While DHES believes that its Statement of Intent, coupled with its recent adoption of rules equivalent to EPA's, demonstrates its

intent to keep its program under SB 212 no more restrictive than the federal government's, DEHS would not oppose the suggestion by some that language "codifying" such intent be incorporated into the bill. DHES, therefore, would not oppose statutory language mandating that rulemaking be no more restrictive than EPA's rules, if the legislature thinks such an amendment is necessary.

For further details on the intent of and the changes brought about by SB 212, the committee members are referred to the Department's "Fact Sheet" and "Proposed Statement of Legislative Intent" which accompany this Comment.

In conclusion, DHES supports adoption of SB 212 as the means by which Montana can perfect an approved federal-equivalent program and thereby obtain final authorization, rather than have the entire program revert to federal operation and control at the end of the interim authorization period.

PROPOSED STATEMENT OF LEGISLATIVE INTENT FOR MONTANA HAZARDOUS WASTE ACT (SB 212)

A statement of intent is required for this bill because it delegates rulemaking and licensing authority to the Department of Health and Environmental Sciences. Senate Bill 212 is intended to separate from the existing Montana Solid Waste Management Act (Sects: 75-10-201, et seq., MCA) all references to the treatment, storage, disposal, generation and transportation of hazardous wastes and place the statutes regulating hazardous wastes into a separate part of the code. The specific objective and intent of the bill is to clarify and extend state rulemaking authority in order to be totally authorized by the Administrator of the Environmental Protection Agency (EPA) to operate a hazardous waste program in Montana which is equivalent to and in lieu of the fede'al hazardous waste program established by Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580, as amended.

The rules promulgated and permitting procedures adopted under this bill shall meet minimum standards under RCRA and shall not be more restrictive than those analogous provisions in which EPA has adopted regulations under RCRA. In the limited situations in which no federal regulations have been adopted or the drafting of regulations has been purposefully left to the states, the Department must be guided and constrained by the purpose set forth in Section 9, the powers of the Department noted in Section 11, the rulemaking guidelines of Section 12, and the minimum requirements of RCRA.

It should be noted that Montana has enacted regulatory provisions under existing Title 75, Chapter 10, Part 2, the Solid Waste Management Act, and has sufficient coverage of hazardous waste responsibilities enabling the state to qualify for interim

authorization from EPA to carry out a program in lieu of the federal RCRA hazardous waste program. This bill grants the Department authority to make additional adjustments, through rulemaking, which will bring its program affecting generators and transporters of hazardous wastes, the universe of hazardous waste, inspection and sampling, definitions, enforcement alternatives and penalties for hazardous wastes into equivalency and consistency with federal requirements.

Senate Bill 212 intends that the Department of Health and Environmental Sciences shall have authority to require by rule, in accordance with the Montana Administrative Procedure Act, that generators of hazardous wastes, prior to transporting hazardous wastes or offering them for transport off-site, must perform certain packaging, labeling, marking and placarding of the wastes in a manner equivalent to the provisions of federal regulations contained in 40 CFR 262.30 through 262.33. The Department shall have authority under the bill to adopt rules setting penalties or fines for generators of hazardous wastes that set upper limitations which are no less than the amount of $10,000 per day, as required for final authorization under the federal program. Furthermore, Senate Bill 212 allows additional rulemaking to clarify the Department's authority to make inspections of and take samples from generators of hazardous wastes in a manner equivalent to federal inspection authority provided in Section 3007 of RCRA and federal rules promulgated under RCRA.

Under existing law, the Department has promulgated rules which define a broad spectrum of hazardous wastes (the universe

of hazardous wastes) by specific listing and by characteristics; which list exclusions from the definition of hazardous waste; which define terms necessary to implement the hazardous waste program; which establish manifest requirements specifying how a hazardous waste is documented from time of generation through transport to time of disposal by the operator of a treatment, storage or disposal facility; which set record keeping and emergency clean-up procedures for transporters of hazardous wastes; which establish licensure procedures and standards for operators of hazardous waste treatment storage and disposal systems; and which provide enforcement alternatives for treatment, storage and disposal facility licenses. All of the existing rules are equivalent to and consistent with the federal program established by RCRA; in many instances, EPA rules have been incorporated by reference.

Under Senate Bill 212, the Department will have authority to amend and revise these rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, which may be needed to meet changing minimum federal standards for a hazardous waste program authorized for state control under RCRA, as amended. Thus, Montana will be able to continue to maintain federal authorization for an independent hazardous waste program, equivalent to the federal program, but operated by the Department.

FACT SHEET

PURPOSE OF HAZARDOUS WASTE BILL

* Establishes hazardous waste authority separate from general solid waste authority.

* Deletes hazardous waste references from the "Montana Solid Waste Management Act".

* Establishes the policy of developing a state program equivalent to the federal program and approvable by EPA.

* Alters definitions to agree with federal definitions.

* Allows DHES to establish a fee system for issuing permits.

* Deletes the transporter licensing requirement, but requires that generators and transporters register with DHES and obtain ID numbers.

* Establishes authority for DHES to issue emergency permits and to grant permits by rule.

* Establishes a variance procedure.

* Specifies a requirement for self-monitoring by facility operators.

* Clarifies and broadens DHES inspection and sampling authority (sampling authority and inspection of generators and transporters were not specified in MSWMA).

* Provides for an inventory of hazardous waste storage and disposal sites - both active and inactive sites.

* Provides for administrative enforcement actions.

* Provides for emergency actions where an imminent hazard is presented.

* Specifies DHES's ability to order cleanup of spills or improperly disposed hazardous wastes.

* Reduces civil penalty limits from $25,000 to $10,000.

* Upgrades criminal penalty provision to $10,000 or 6 months imprisonment. (Necessary to meet minimum requirements placed by EPA on authorized state programs.)

* Designates DHES as the agency responsible for the hazardous waste program and encourages DHES to coordinate its program with those programs operating in other states.

* Establishes venue for legal proceedings.

* Specifies that existing rules, orders, permits and legal actions are not invalidated by this new act.

Proposed Amendment to the Introduced
Copy of Senate Bill 212:

1. Page 25, lines 22 and 23.

Following: "fine"
Strike: "of not less than"
Insert: "not to exceed"

2. Page 25, lines 23 and 24.

Following: "imprisonment"
Strike: "for no less than"
Insert: "not to exceed"

3. Page 25, line 24.

Following: "both."
Insert: "A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both."

Offices located
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MONTANA COAL COUNCIL

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TESTIMONY ON SB 212 BEFORE THE

SENATE PUBLIC HEALTH COMMITTEE, JANUARY 30, 1981

THE MONTANA COAL COUNCIL WISHES TO OFFER FOR YOUR CONSIDERATION AN AMENDMENT TO SENATE BILL 212 WHICH WOULD ESTABLISH A STATUATORY GUARANTEE THAT RULES ADOPTED BY THE STATE IN REGULATING HAZARDOUS WASTE WOULD BE NO MORE STRINGENT THAN THOSE IMPOSED BY THE FEDERAL GOVERNMENT.

WE HAVE DISCUSSED OUR CONCERNS WITH OFFICIALS IN THE SOLID WASTE DIVISION OF THE DEPARTMENT OF HEALTH WHO HAVE ASSURED US THAT IT IS THEIR INTENT TO SET UP A PROGRAM THAT IS NO MORE RESTRICTIVE THAN THE FEDERAL PROGRAM. WITH THE ADOPTION OF THIS AMENDMENT, THEREFORE, WE WOULD NOT OPPOSE SENATE BILL 212.

IF, HOWEVER, THE AMENDMENT IS NOT ACCEPTED, WE WISH TO ENTER OUR REASONS FOR OPPOSITION IN THE RECORD.

THE HANDLING AND MANAGEMENT OF HAZARDOUS WASTE IS A HIGHLY TECHNICAL AND POTENTIALLY DANGEROUS ACTIVITY FOR WHICH MANY RULES AT THE FEDERAL LEVEL HAVE JUST THIS WEEK BEEN MADE AVAILABLE FOR REVIEW.

A STATE PROGRAM EQUIVALENT TO THE FEDERAL PROGRAM WHICH THIS BILL SEEKS TO ESTABLISH WOULD REGULATE 361 SUBSTANCES FOR FOUR DIFFERENT CHARACTERISTICS. EXPERTS IN OUR INDUSTRY CONSIDER THIS TO BE ONE OF THE MOST COMPLEX OF ALL REGULATORY AREAS.

UNDER THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, STATES HAVE UNTIL DECEMBER OF 1982 TO COME UP WITH THEIR OWN PROGRAMS BEFORE THE FEDERAL GOVERNMENT STEPS IN. WE FEEL THAT EVEN THOUGH THERE MIGHT BE A LAPSE OF A

FEW MONTHS WHERE THE STATE COULD NOT HAVE CONTROL, IT IS BETTER TO LEAVE THE PROGRAM FOR NOW IN THE HANDS OF THE AGENCY WHICH WILL WRITE AND, HOPEFULLY, UNDERSTAND THE REGULATIONS TO IMPLEMENT IT.

AT THIS POINT, THE FEDERAL RULES AND REGULATIONS GOVERNING THE MANAGERIAL ASPECTS OF THE PROGRAM ARE IN PLACE BUT THOSE WHICH SPECIFY TECHNICAL REQUIREMENTS ARE NOT. ASSUMING THAT IT HAS REQUIRED A GREAT DEAL OF EXPERTISE AT THE FEDERAL LEVEL TO PROMULGATE SUCH REGULATIONS, IT IS OUR BELIEF THAT DEVELOPING THE SAME EXPERTISE IN MONTANA WOULD REQUIRE AN ENORMOUS EDUCATIONAL EFFORT AT CONSIDERABLE COST.

COLORADO'S COST TO START ITS OWN PROGRAM BEGAN WITH A REQUEST FOR 15 ADDITIONAL FTES AT AN AVERAGE EXPENDITURE OF $250,000 A YEAR AND A TOTAL BIANNUAL APPROPRIATION OF $607,000. WE WOULD LIKE TO POINT OUT THAT THE FEDERALLY-ADMINISTERED PROGRAMS ARE 100 PER CENT FEDERALLY FUNDED WHEREAS A STATE-ADMINISTERED PROGRAM REQUIRES AT LEAST A 25 PER CENT MATCH.

WE WOULD ALSO LIKE TO REMIND THE COMMITTEE THAT ONCE THE STATE HAS ASSUMED THE FINANCIAL AND REGULATORY BURDEN OF THE PROGRAM, SOME PORTIONS OF THE STATE AUTHORITY ARE STILL SUBJECT TO REVIEW AND OVERRIDE BY THE ENVIRONMENTAL PROTECTION AGENCY. THOSE INCLUDE SUCH AREAS AS PERMITTING AND MONITORING OF PERMITTED ACTIVITIES. THAT WOULD MEAN THAT THE REGULATED COMMUNITY WOULD STILL HAVE TO SATISFY TWO AGENCIES ON MANY MAJOR DECISIONS.

THOSE ARE SOME OF THE PROBLEMS THAT WE FORESEE WITH THE BILL IN GENERAL. MORE PERTINENT TO OUR SPECIFIC INDUSTRY, THOUGH, WE WOULD LIKE YOU TO BE AWARE THAT THE COAL INDUSTRY CURRENTLY IS EXEMPT FROM THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT BECAUSE OF OUR ACTIVITIES ARE COVERED BY THE SURFACE MINE RECLAMATION AND CONTROL ACT. IN THE INTEREST OF CONSISTENCY, THEN, WE REQUEST THAT YOU ADOPT AN AMENDMENT WE ARE OFFERING WHICH WOULD PUT US IN THE SAME POSITION AT THE STATE LEVEL.

Proposed Amendments to SB 212

Page 4: line 4, delete "department of"

Page 4: line 4, delete "lands"

Page 4: line 5, delete "The department of"

Page 4: line 6, delete "natural resources and conservation"

Page 4: line 6, insert "by the state"

Sentence would therefore read ". . . . reclamation laws administered by the state, slash and forest debris under laws administered by the state, . . ."

Page 10: Between lines 21 and 22 insert "(c) Hazardous wastes do not include those functions governed by Title 82, Part 4, MCA."

Page 12: line 21, delete "department of"

Page 12: line 21, delete "lands"

Amendment to SB 212

Page 14, line 6: strike the period and insert:

" , except that the department is not permitted to adopt rules under this act that are more stringent than those promulgated by the federal government."

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MONTCO Coal Co.

Senate Bill 212

Mr. Chairman, for the record my name is Pat Wilson and I represent MONTCO in support of SB 212. MONTCO is in full support that the Montana State Department of Health and Environmental Sciences have full charge of the hazardous waste program and the revamping of the solid waste laws. The benefit of having the program based in Helena rather than the Denver EPA office will be invaluable in time saved by industry. We ask for a "do pass" from the committee on SB 212.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE
MONTANA STATE SENATE

FEBRUARY 2, 1981

The meeting of the Public Health, Welfare, and Safety Committee was called to order by Chairman Tom Hager on Monday, February 2, 1981 at 1:00 p.m. in Room 410 of the State Capitol Building.

ROLL CALL: Al members were present. Kathleen Harrington, staff researcher, was also present.

Many visitors were in attendance. (See attachment.)

CONSIDERATION OF SENATE BILL 251: Senator Larry Tveit of Senate District 27, sponsor of Senate Bill 251, gave a brief resume of the bill. This bill is an act to allow certain controlled burning for training of firefighters. This bill will allow a city or county to do controlled burning in order to train firefighters. This bill is directed at solid waste pits that counties and municipalities have to maintain and operate. The wood products including trees, brush and other wood material which have to buried, uses up the existing pits much more rapidly. This in turn causes the buying of more land and stating all over much sooner. For example, the Sidney disposal pit would have lasted two years longer if the wood products could have been set aside and burned under the supervision of local fire departments for training of firefighters.

Dave Fischer, of the Montana Fire Chiefs Association stood in support of Senate Bill 251 and stated that this permissive legislation is needed for training fire fighters.

Art Korn of the Montana State Volunteer Firemen's Association stood in support of the bill and stated that this would bring about good fire training.

Henry Lohr of the Broadwater County Rural Fire District stated his support of the bill.

Dan Mizner of the League of Cities and Towns stated his support of the bill and stated that this would be a very good training program. Mr. Mizner felt the need for the bill as it gives the much needed authority Mr. Mizner then commented that a representative from the Montana Association of Counties was across the hall testifying on another bill but that the Montana Association of Counties was also in favor of this bill.

With no further proponents Chairman Hager called on the opponents.

Senator Berg asked if the amendment would be okay with the federal government. Mrs. Driscoll stated that she did not know but would check into the matter.

Senator Berg asked Mr. Cain if he felt that the $5 increase would be significant to his policy holders. Mr. Cain stated that these people as sometimes on a fixed income and sometimes $5 can be thedifference between keep and policy and letting it lapse.

Senator Himsl asked just what are the minimum standards.

Senator Berg stated that he would be relucant to accept the amendment offered by Mr. Cain.

Senator Hazelbaker closed asking for favorable consideration from the Committee.

DISPOSITION OF SENATE BILL 230: This bill is an act to allow physical therapist to evaluate without referral. A motion was made by Senator Halligan that Senate Bill 230 receive a DO PASS recommendation from the committee. Motion carried unanimously.

DISPOSITION OF SENATE BILL 212: This bill is an act providing a program of hazardous waste management seperate from the non-hazardous solid waste management program in Montana.

Kathleen Harrington, staff researcher, explained the proposed amendments to the Committee. With a discussion period following.

A motion was made by Senator Norman that the following amendments 1-2-3-5-6 be not adopted by the Committee. Motion carried.

1. Page 4, line 4
   Following: "the"
   Strike: "department of"

2. Page 4, line 4.
   Following: "state"
   Strike: "lands"

3. Page 4, lines 5 and 6
   Following: "the"
   Strike: "department of natural resources and conservation"
   Insert: "state"

5. Page 12, line 21.
   Following: "the"
   Strike: "department of"

6. Page 12, line 21.
Following: "state"
Strike: "lands"

Senator Himsl made a motion that amendment #4 be accepted by the Committee. Motion carried.

4. Page 10.
Following: line 21.
Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, part 4."

Senator Himsl stated that the states are becoming an administrative arm of the federal government.

Senator Halligan stated that the federal does not recognize our problems as well as those involved more closely with the state.

A motion was made by Senator Johnson to accept amendment #7. After some discussion she withdrew her motion.

Kathleen stated that amendments 8 and 9 were nothing more than drafting errors. A motion was made by Senator Berg to accept amendments 8 and 9. Motion carried.

8. Page 25, lines 22 and 23.
Following: "fine"
Strike: "of not less than"
Insert: "not to exceed"

9. Page 25, line 23 and 24.
Following: "imprisonment"
Strike: "for no less than"
Insert: "not to exceed"

A motion was made by Senator Berg that amendment #10 be adopted. Motion carried.

10. Page 25, line 24.
Following: "both"
Insert: "A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both."

A motion was made by Senator Himsl that amendment #7 be adopted by the Committee. Motion carried.

Kathleeen will check with the EPA regarding regulations which were handed down and report at the next meeting. She will also check into manifests and report back at the next meeting.

Everyone stated that there would be a gentlmen's agreement concerning actijon taken on the amendments thus far on Senate Bill 212 so at the next meeting more work could progress on this bill.

ANNOUNCEMENTS: The next meeting of the Public Health, Welfare and Safety Committee will be held on Wednesday, February 4, 1981 at 1 in Room 410 of the State Capitol Building to consider Senate Bill 310 and House Bills 62 and 70.

ADJOURN: With no further business the meeting was adjourned.

Tom Hager

SENATOR TOM HAGER, CHAIRMAN

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STATE PUBLISHING CO., HELENA, MONTANA

STANDING COMMITTEE REPORT

FEBRUARY 19 81
Journal

MR. PRESIDENT:

We, your committee on PUBLIC HEALTH, WELFARE, & SAFETY

having had under consideration SENATE Bill No. 212

Respectfully report as follows: That SENATE Bill No. 212,

introduced bill, be amended as follows:

1. Page 4, line 4
Following: "the"
Strike: "department of"

2. Page 4 line 4
Following: "state"
Strike: "lands"

3. Page 4, lines 5 and 6
Following: "the"
Strike: "department of natural resources and conservation"
Insert: "state"

4. Page 10.
Following: Line 21
Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, part 4."

BYPASS

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5. Page 12, line 21.
Following: "the"
Strike: "department of"

6. Page 12, line 21.
Following: "state"
Strike: "lands"

7. Page 14, line 6.
Following: "program"
Insert: ", except that the department is not permitted to adopt rules under this act that are more stringent than those promulgated by the federal government."

8. Page 25, lines 22 and 23.
Following: "fine"
Strike: "of not less than"
Insert: "not to exceed"

9. Page 25, line 23 and 24.
Following: "imprisonment"
Strike: "for no less than"
Insert: "not to exceed"

10. Page 25, line 24.
Following: "both"
Insert: "A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both."

Department of Health and Environmental Science's response to proposed amendments to Senate Bill 212 offered by the Montana Coal Council. (Response at request of Senator Tom Hager):

The Coal Council's proposed amendments seek two objectives: (1) that rules adopted by DHES under Senate Bill 212 are no more restrictive or stringent than federal rules under the Resource Conservation and Recovery Act, and (2) that coal mining is specifically excluded from coverage under the act. As stated in its testimony presented January 30, DHES will not oppose the Coal Council's objective (1). DHES will note below some language that it believes will aid accuracy of interpretation for that amendment. For the reasons noted below, however, the Department of Health objects to the need for statutory modification to accommodate Coal Council objective (2). In the event the Committee nevertheless wishes to incorporate language which would exlude coal from coverage, DHES offers substitute wording below which would focus the exclusion on coal and not all mining activities.

* * *

Regarding the "no more restrictive" language, p. 14, l.6, DHES proposes a substitution of the following:

> ", except that the department may not adopt rules under (sections 8 through 28) that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended.

The foregoing substitution identifies the particular federal regulations that give guidance to the Department in measuring what may not be exceeded. Other changes reflect appropirate word choice for legislative drafting.

* * *

Regarding the amendments suggested for page 4, lines 4 through 6, the Department has no objection. They reflect the belief that mining and reclamation laws may soon be administered by the Department of Natural Resources and Conservation rather than Department of State Lands.

* * *

DHES objects to making a statutory exemption for coal mining. In accord with the Department's intent to parallel federal regulation under RCRA, DHES has already adopted or noticed for adoption rules which accomplish the same purpose as current federal rules exempting coal mines:

"ARM 16.44.304 EXCLUSIONS (1) The following are not subject to regulation under this chapter:

. . . . . .

(e) Mining overburden returned to the mine site;

. . . . . ."

and also:

"(2) The following are not subject to regulation under this chapter but may be subject to regulation under the provisions of ARM Title 16, chapter 14:

. . . . . .

"(d) waste from the extraction, beneficiation and processing of ores and minerals (including coal), including phosphate rock and overburden from the mining of uranium ore."

Title 16, Chapter 14 refers to ordinary solid waste regulations. The two sections quoted above are taken directly from the latest EPA regulations under RCRA exempting coal and other mineral mining from hazardous waste coverage. It is the Department's understanding, however, that the federal regulations from which Montana's have been taken are temporary in nature and will be reviewed within three years or less. At that time, federal policy may change to again include the wastes of certain metal mining operations as hazardous. DHES would like to be in a position to conform its rules if such a change is made, rather than wait to use the legislative process.

The Coal Council's proposed amendment excludes as hazardous wastes all those "functions" (presumably, wastes) governed by Title 82, Part 4, MCA. That is the 70-page reclamation law affecting not only coal but also metal and uranium mining. The Department believes the suggested language, if it must be included in the statute is overly broad. The Department suggests an alternative:

Page 10, line 21.

Following: "infections."
Insert: "(c) Hazardous wastes do not include coal mining overburden returned to the mine site or waste from the extraction, beneficiation and processing of coal."

As earlier stated, DHES believes that such statutory amendment is unnecessary since the Department's regulations presently effect the coal exemption and DHES has stated its intent not to make rules more restrictive than EPA's.

MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE
MONTANA STATE SENATE

February 4, 1981

The meeting of the Public Health, Welfare and Safety Committee was called to order to Vice-Chairman, Matt Himsl on Wednesday, February 4, 1981 at 1:00 p. m. in Room 410 of the State Capitol Building.

ROLL CALL: All members were present with the exception of Senator Hager, who was excused and Senator Norman who arrived late. Kathleen Harrington, Staff Researcher, was also present.

Many visitors were also in attendance. (See Attachment.)

CONSIDERATION OF HOUSE BILL 62: Representative Robert Dozier of District 61, sponsor of House Bill 62, gave a brief resume of the bill. This bill is an act to include the Vietnam conflict within the definition of the term "war or declared national emergency". Representative Dozier stated that the sole purpose of this bill is to include Vietnam Veterans as a group clearly covered for purposes of preference in public employment in Montana. Section 10-2-202 does not now specifically stipulate the period of Vietnam conflict. All other wars are clearly spelled out with the dates cited. Veterans of those wars who served anytime within those dates are eligible for preference. This bill would insure that Vietnam Veterans have the same right. At the present time there are about 28,000 Vietnam veterans in Montana. The Employment Service and public agencies are already giving Vietnam veterans a preference as a matter of procedure, this practice could be considered faulty if it were challenged. This bill will insure equal treatment for all veterans.

David Armstrong of the Veterans' Affairs Division of S.R.S. stated that this bill simply changes the dates of the Vietnam conflict to coincide with those dates established by Congress.

Tony Cumming of the American Legion of Montana and also representing the V.F.W. stood in support of the bill.

With no further opponents Vice-Chairman Himsl called on the opponents. Hearing none, the meeting was opened to a question and answer period from the Committee.

Senator Norman asked if this bill created a conflict with the former Vietnam bonus bill which was passed previously. Representative Dozier replied that there is no conflict.

Representative Dozier closed by urging the committee to vote a favorable recommendation on the bill.

A

Senator Himsl suggested that the attorneys get together to come up with some workable amendments to the bill. Senator Brown and Mr. Loendorf were both agreeable to this.

Senator Brown asked for a favorable consideration from the committee in his closing remarks.

Senator Brown and Mr. Loendorf then offered the following amendments.

1) page 8, line 10.
Following: "person"
Insert: "receiving notice of the claim from the insured or any other person."
Strike: "a"
Insert: "A"

2) page 8, line 11.
Following: "claimant"
Insert: "shall also be reported to the board within 30 days of such settlement or decision".

Senator Olson moved that the above amendments be adopted. Motion carried unanimously.

A motion was made by Senator Berg that page 8, line 7 be amended by striking the word "valid", following "any". Motion carried unanimously.

A motion was made by Senator Himsl that Senate Bill 310 DO PASS, as amended. Motion carried unanimously.

DISPOSITION OF SENATE BILL 212: S.B. 212 is an act providing a program of hazardous waste management separate from the non-hazardous solid waste management program. Sponsor of this bill is Senator Hager.

A motion was made by Senator Halligan that proposed amendments 1, 2, 3, 5, 6, and 7 which were discussed on February 2, 1981 and received a do not adopt at that time receive the same DO NOT adopt recommendation again. Motion carried.

Amendment #4 was moved by Senator Olson to be adopted. Motion carried.

Page 10
Following: line 21
Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, Chapter 4.

The question of manifest came up. All states will develop standard manifest. E.P.A. has the jurisdiction on this.

Senator Berg stated that coal and uranium are just as hazardous as some of the things included in the bill. However, both coal and uranium are covered already by federal law.

A motion was made by Senator Halligan that Senate Bill 212 receive a DO PASS, as amended recommendation from the Committee.

The federal government does not have enough money to enforce the laws. This bill would enable Montana people to be in charge who understand Montana problems.

Senator Halligan stated that he would like the state to adopt rules that are more strict. However, he will support the bill.

Senator Halligan's motion was then voted upon. Motion carried.

SENATE BILL 137: Senator Hager announced to the Committee that SB 137 is being rewritten by the Department of S.R.S.

DISPOSITION OF SENATE BILL 228: This bill is an act to amend laws relating to foster care by clarifying financial responsibility for payment, to require court review of children in foster placements through a foster care review committee. Senator Pat Regan is sponsor of this bill.

Senator Berg stated that he felt perhaps the bill should be amended on page 2, line 11. A motion was made by Senator Olson that the bill be amended as follows:

Page 2, lines 11 and 12.
Following: "every"
Strike: "geographic"
Insert: "judicial"
Following "district"
Strike: "established by the departments of social and rehabilitation services."

Motion carried.

A motion was made by Senator Berg to amend the title as follows:

Title, line 7.
Following: "CARE"
Strike: "BY CLARIFYING"
Insert: "FACILITIES: TO CLARIFY"

STATE PUBLISHING CO., HELENA, MONTANA

STANDING COMMITTEE REPORT

FEBRUARY 19 81

Journal

MR. PRESIDENT:

We, your committee on PUBLIC HEALTH, WELFARE, & SAFETY

having had under consideration SENATE Bill No. 212

Respectfully report as follows: That SENATE Bill No. 212,

introduced bill, be amended as follows:

1. Page 4, line 4
Following: "the"
Strike: "department of"

2. Page 4 line 4
Following: "state"
Strike: "lands"

3. Page 4, lines 5 and 6
Following: "the"
Strike: "department of natural resources and conservation"
Insert: "state"

4. Page 10.
Following: Line 21
Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, part 4."

DO PASS

Part 2

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5. Page 12, line 21.
Following: "the"
Strike: "department of"

6. Page 12, line 21.
Following: "state"
Strike: "lands"

7. Page 14, line 6.
Following: "program"
Insert: ", except that the department is not permitted to adopt rules under this act that are more stringent than those promulgated by the federal government."

8. Page 25, lines 22 and 23.
Following: "fine"
Strike: "of not less than"
Insert: "not to exceed"

9. Page 25, line 23 and 24.
Following: "imprisonment"
Strike: "for no less than"
Insert: "not to exceed"

10. Page 25, line 24.
Following: "both"
Insert: "A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both."

STATUS SHEET

HUMAN SERVICES COMMITTEE

1981 Legislature (47th Legislative Session)

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 212	Providing a program of hazardous waste management separate from the nonhazardous solid waste management program in Montana.	2/16	Hager	3/11	AS AMENDED BE CONCURRED IN	3/20
SB 228	To amend laws relating to foster care by clarigying financial responsibility for payment; to require court rev. of placements etc.	2/16	Regan	3/9	AS AMENDED BE CONCURRED IN	3/13
SB 270	To increase the amount of money that a discharged inmate may receive.	2/18	Ryan	3/9	BE CONCURRED IN	3-11-81
SB 271	To provide that the department of institutions is not required through its parole officers to supervise patients released from Warm Springs.	2/18	Ryan	3/9	AS AMENDED BE CONCURRED IN	3/11
SB 137	To provide for the licensing of community group homes for the developmentally disabled and to allow for the adoption of rules rel. to lic.	2/19	Johnson	3/13	BE CONCURRED IN	3/13
SB 411	To delete the requirement that services for medical aid and hospitalization furnished by a county to indigents be app. by DHES	2/21	Himsl	3/11	BE CONCURRED IN	3/25

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MAY 19 1981

OF MONTANA

HUMAN SERVICES COMMITTEE MEETING
March 11, 1981

The Human Services Committee convened at 12:30 p.m. in Room 103 of the Capitol on March 11, 1981, with Chairman Budd Gould presiding. All members were present except Representative Bardanouve.

SB 212

BOB ADAMS, attorney for the Department of Health and Sciences, appeared for the sponsor, SENATOR HAGER, who was unable to be at the hearing. He said the bill was a proposal to provide a program of hazardous waste management separate from the nonhazardous solid waste management program in Montana. (See EXHIBIT I) He called to the attention of the committee the last page of the exhibit. He said that, even if the Appropriations Committee cut off all funds for hazardous wastes, it might be possible for DHES to work with the federal agency in dealing with this matter. The DHES would like the law on the books, so that ultimately there will be a program governed by Montanans, he said.

PROPONENTS:

PAT STUART, director of the Montana Coal Council, appeared in favor of the bill and agreed that the program should be governed by Montanans.

ROBERT N. HELDING, attorney and executive director of the Montana Wood Products Association, urged support of the bill and favors Montana administration.

DON ALLEN, director of the Petroleum Association, felt it was inconceivable for the state to allow the "feds" to run the hazardous waste program.

BEN HAVDAHL, Montana Motor Carriers Association, appeared in favor of the bill. His association supports state administration, but felt that regulations of transporting materials should be of an uniform nature, as the materials would be transported from one state to another.

BOB QUINN, Montana Power lobbyist, asked to be placed on the record as favoring the bill.

MARGARET S. WARDEN, former senator, said that she favors the bill and Montana control. She also said that Montana industry favors the bill.

DAWN NORTH, representing the League of Women Voters, appeared in support of the bill.

OPPONENTS:

There were none.

QUESTIONS FROM THE COMMITTEE:

REP. SWITZER asked if a person would have any recourse if they felt they were being discriminated against in disposing of hazardous waste. ADAMS said that the regulations, first of all, are the equivalent of federal regulations. But, if a person felt discriminated against, he could appeal through the district courts. He didn't believe there would be recourse through a federal court for a state program.

REP. BENNETT wondered if the Environmental Protection Agency (EPA) has a precise protocol outlined on this subject. ADAMS said that it did and that the EPA will enact full monitoring of the program.

ADAMS closed the hearing.

SB 411

SENATOR HIMSL opened the hearing on the bill which would delete the requirement that services for medical aid and hospitalization furnished by a county to indigents be approved by the Department of Health and Environmental Sciences (DHES) and private associations. It removes the requirement on the part of the county commissioners of having to go through the DHES for approval of aid the counties give.

PROPONENTS:

There were none.

OPPONENTS:

There were none.

QUESTIONS FROM THE COMMITTEE:

There were none.

SB 426

SENATOR HIMSL opened the hearing on SB 426, which would reestablish the Board of Optometrists and establish rules regarding them and allied practice. He mentioned that part of the bill dealt with advertising, restrictions on opticians, and restrictions regarding employment by corporations.

Comments of the Department of Health and Environmental Sciences Explaining and in Support of SB 212:

Congress, through enactment of the Resource Conservation and Recovery Act of 1976 (RCRA), has given the states the choice of establishing hazardous waste programs approved by the federal government and operated by the states themselves or of allowing the Environmental Protection Agency (EPA) to operate the program without state involvement. In short, Montanans will have a hazardous waste program; the question is whether that program will be operated from Denver and Washington by EPA or by DHES on behalf of the Montana Legislature. DHES seeks legislative approval of the proposed Montana Hazardous Waste Act in order to obtain a program equivalent to the federal program, yet approved for operation by the State of Montana.

"Hazardous waste" is broadly defined in SB 212 to match the realities of the times: it encompasses those wastes which cause or significantly contribute to increased mortality or serious illness, or which present substantial threats to human health or the environment. The bill meets the need to control the full range of hazardous waste processing in Montana, from the generation of wastes through their transportation to final containment by treatment, storage and disposal.

Hazardous waste regulation is already an accepted idea in Montana. The present code contains the foundation of our hazardous waste program in the "Montana Solid Waste Management Act," 75-10-201, MCA, et seq. Extensive administrative rules have been adopted in ARM Title 16, Chapter 44 which promulgate the hazardous waste statutes existing within the Solid Waste Management Act. The present law and

regulations, in fact, have proved sufficient to bring Montana "interim authorization" to operate its hazardous waste program for approximately two more years in lieu of an EPA-operated program. Interim authorization was received on February 26, 1981.

As the Statement of Legislative Intent shows, SB 212 will accomplish basically two purposes. First, it will separate all authority relating to hazardous waste from 75-10-201, MCA, et seq. and consolidate it into a new act and part of the code. Second, it will sufficiently adjust and clarify DHES' rulemaking authority to allow the Department to bring its program into full equivalency and consistency with EPA's program. When this is accomplished, Montana will move from interim authorization to full and final approval from EPA to run its own program. At that point, Montana will solely administer the permitting, regulating and enforcing. It should be noted that we are close to having the necessary authority at present. SB 212 adds authority to make inspections of and take samples from generators of waste, and includes them as subjects of the enforcement authority. A variance procedure is established, and definitions have been adjusted to coincide with federal law. The bill gives authority to require certain packaging and marking of wastes by generators.

The rules which have already been adopted in ARM Title 16, Chapter 44 are the equivalent to and no more restrictive than the corresponding federal regulations. Some of Montana's regulations adopt EPA rules by reference. As declared in the Statement of Intent, the Department is seeking a program which is equivalent to EPA's and which is no more restrictive. Furthermore, following amendment in the Senate with which the Department concurred, the bill itself now contains language in new Section 12 which prohibits adoption of rules more

restrictive than those adopted by the federal government.

For further details on the intent of and the changes brought about by SB 212, the committee members are referred to the Department's "Fact Sheet" and "Explanation of the Manifest System" which accompany this Comment.

You may also be aware that the Appropriations Committee voted March 10, 1981, not to fund the hazardous waste program for fiscal years 1982 and 1983. General fund monies thus deleted amount to $114,200. Such funding would have been necessary regardless of whether SB 212 passed, since, as noted above, Montana has a partial hazardous waste program enacted already. Your immediate question might then be "why pass this legislation without funds to implement it?". Our reply and belief is that there may yet be a means of obtaining federal funds, three-fourths of the program budget, by agreeing with EPA that certain other State funds already budgeted for the solid waste program may be used as a nominal "matching" amount. There may be other agreements obtainable with EPA that will enable the state to reach its objective of continuing interim authorization and ultimately obtaining final authorization despite the present funding deficiency. Finally, the Department would respectfully submit that it is appropriate to have this legislation in place and ready for funding by the next legislature even if the desire to implement the program during the next two years cannot be assured through the suggested agreements.

In conclusion, DHES supports adoption of SB 212 as the means by which Montana can perfect an approved federal-equivalent program and thereby obtain final authorization, rather than have the entire program revert to federal operation and control at the end of the interim authorization period.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

EXPLANATION OF THE MANIFEST SYSTEM REQUIRED BY HAZARDOUS WASTE LEGISLATION

The U.S. Department of Transportation (DOT) has required "shipping papers" to accompany hazardous material shipments for a number of years. Several states have also implemented "manifest" systems in recent years for the transportation of hazardous wastes. In implementing the federal hazardous waste program, the U.S. Environmental Protection Agency (EPA) worked with DOT on developing requirements for waste manifests. It was agreed that the "manifest" would legally constitute a "shipping paper," and both EPA and DOT issued regulations in May of 1980 stating the required information to be contained in a manifest and how waste manifests must be used. In keeping with previous DOT rules on shipping papers, a specific manifest form was not specified by DOT and EPA.

Various states on the other hand do require that transporters use a specific, state-authorized manifest form. Because of this, transporters who move hazardous wastes in interstate commerce find that several different manifest forms must be filled out for the same waste shipment to satisfy the requirements of the states through which the waste passes. The transportation industry is understandably dissatisfied with this situation.

Montana has not contributed to this problem. The Department of Health and Environmental Sciences (DHES) hazardous waste rules specify the exact requirements for a waste manifest as are specified by EPA and DOT. In addition, DHES has worked with the Western Governors Policy Office (WESTPO) states and with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) in evaluations of a uniform national manifest system.

It appears likely that EPA and DOT, after input from the states (through ASTSWMO) and the transportation industry, will soon mandate a uniform waste manifest system nationwide. All transporters will have to use the same manifest form, and all states will have to accept it. For the present time DHES proposes to leave its administrative rules as presently drafted requiring the same information for a manifest as is required by EPA. We do not feel that any amendment to Senate Bill 212 is needed to specify a state manifest compatible with federal requirements.

FACT SHEET

PURPOSE OF HAZARDOUS WASTE BILL

* Establishes hazardous waste authority separate from general solid waste authority.

* Deletes hazardous waste references from the "Montana Solid Waste Management Act".

* Establishes the policy of developing a state program equivalent to the federal program and approvable by EPA.

* Alters definitions to agree with federal definitions.

* Allows DHES to establish a fee system for issuing permits.

* Deletes the transporter licensing requirement, but requires that generators and transporters register with DHES and obtain ID numbers.

* Establishes authority for DHES to issue emergency permits and to grant permits by rule.

* Establishes a variance procedure.

* Specifies a requirement for self-monitoring by facility operators.

* Clarifies and broadens DHES inspection and sampling authority (sampling authority and inspection of generators and transporters were not specified in MSWMA).

* Provides for an inventory of hazardous waste storage and disposal sites - both active and inactive sites.

* Provides for administrative enforcement actions.

* Provides for emergency actions where an imminent hazard is presented.

* Specifies DHES's ability to order cleanup of spills or improperly disposed hazardous wastes.

* Reduces civil penalty limits from $25,000 to $10,000.

* Upgrades criminal penalty provision to $10,000 or 6 months imprisonment. (Necessary to meet minimum requirements placed by EPA on authorized state programs.)

* Designates DHES as the agency responsible for the hazardous waste program and encourages DHES to coordinate its program with those programs operating in other states.

* Establishes venue for legal proceedings.

* Specifies that existing rules, orders, permits and legal actions are not invalidated by this new act.

The attached proposed amendment to SB 212's definitions, at new Section 10(7)(b), would delete subsection (b) entirely. The subsection lists several broad categories of hazardous wastes and mentions the group "radioactive". These categories are for purpose of example only and are not necessary for the defining of hazardous waste, which is accomplished in subsection 7(a) immediately above (b). Because the term "radioactive" is mentioned in (b) and certain radioactive materials are regulated by another state agency, the Occupational Health and Safety Bureau, continued mention of radioactive in the bill could create confusion.

The attached amendment should serve to remove concerns regarding possible duplication of agency regulation. There are no radioactive substances that EPA, under RCRA, presently requires to be regulated by the lead agency for hazardous waste. There might possibly be radioactive items covered by RCRA in the future. If so, the basic definition of hazardous waste in subsection 7(a) will give the agency authority to regulate such items.

The Department believes that each of the remaining example categories in (b) should be deleted since all are covered by the definitional section preceding, and specific mention is not necessary.

Proposed Amendment to the THIRD READING

Copy of Senate Bill 212

Page 10, lines 19 through 22:

Strike: subsection (b) in its entirety
Renumber: subsequent subsection

MINUTES OF THE HUMAN SERVICES COMMITTEE
Friday March 20, 1981

The Human Services Committee convened at 12:30 p.m. on Friday March 20, 1981 in Room 103 of the Capitol with CHAIRMAN BUDD GOULD presiding. All members were present except Representatives SEIFERT and BARDANOUVE.

SB 480
SENATOR Healy opened the hearing on SB480, which was to reestablish the Board of Hearing.

Chairman Gould said that, for purposes of this hearing, the Proponents testifying are to be the hearing aid dispensers (people) and the opponents are to be those who would like to have the bill amended.

SENATOR HEALY stated that he would suggest amending the "exemption" stipulation in the title, and other amendments on page 1, line 13, on page 8, lines 3 through 11, and striking Section 5 entirely.

PROPONENTS:
JOHN SWEENEY, a hearing aid dispenser of Butte, presented written testimony for the committee (EXHIBIT I). He also presented copies of the February 15, 1977 DHEW Federal Register, regarding hearing aid devices. (EXHIBIT II)

ROBERT YUROVICH, a Billings hearing aid dealer, said he had sold hearing aids for 15 years. He said that licensing has been required for the last 12 years. Before, that he told the committee, there were many unscrupulous dealers. The licensing requirement reduced the number of hearing aid dealers from 60 to 30. It has also effected higher quality business practices. He felt the requirement for maintaining an office insured service to the consumer, and felt also that all dealers must be trained. He agreed with the provision that provided for handling complaints.

JIM GOING, a hearing aid dealer in Great Falls, told the committee that he received a degree in audiology in 1967, and that he had worked for the state as an audiologist in the past. He supported the bill but felt that line 12 should be stricken, because he felt that anyone who dispenses hearing aids should have as much training

with the more than 200 children wearing aids at the school in Salem, he said.

REP. WINSLOW asked ROLAND where he learned to fit hearing aids. ROLAND said he was trained in an office and by going to work-shops.

SENATOR HEALY closed the hearing on the bill.

EXECUTIVE SESSION

SB 212.

REP. NILSON moved that SB212 BE CONCURRED IN.

REP. METCALF moved the following amendment (suggested by DHES):

Page 10, lines 19 through 22
Strike: subsection (b) in its entirety
Renumber: subsequent subsection

The amendment was accepted by the committee UNANIMOUSLY.

RUSS JOSEPHSON read 2 suggested amendments to the Statement of Intent.

They were as follows:
1. Statement of Intent, Page 1, line 9.
Following: "Act ("
Strike: "Sects: 75-10-201, et seq. MCA"
Insert: "Title 75, ch. 10, part 2"
2. Statement of Intent, page 2, line 18.
Following: "penalties"
Strike: "for hazardous wastes"

REP. NILSON MOVED THAT SB212, AS AMENDED, BE CONCURRED IN. The motion was seconded and PASSED UNANIMOUSLY.

REP. METCALF was asked to carry the bill.

REP. GOULD announced that the committee members were to be the guests of the Dental Association for lunch on Monday, March 30 at 12 Noon.

The meeting adjourned at 2 p.m.

CHAIRMAN BUDD GOULD

RJ

STATEMENT OF INTENT

SENATE BILL 212

Senate Public Health Committee

A statement of intent is required for this bill because it delegates rulemaking and licensing authority to the Department of Health and Environmental Sciences. Senate Bill 212 is intended to separate from the existing Montana Solid Waste Management Act (~~Sects. 75-10-201, et seq., MCA~~ TITLE 75, CH. 10, PART 2) all references to the treatment, storage, disposal, generation, and transportation of hazardous wastes and place the statutes regulating hazardous wastes into a separate part of the code. The specific objective and intent of the bill is to clarify and extend state rulemaking authority in order to be totally authorized by the Administrator of the Environmental Protection Agency (EPA) to operate a hazardous waste program in Montana which is equivalent to and in lieu of the federal hazardous waste program established by Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580, as amended.

The rules promulgated and permitting procedures adopted under this bill shall meet minimum standards under RCRA and shall not be more restrictive than those analogous provisions in which EPA has adopted regulations under RCRA.

In the limited situations in which no federal regulations have been adopted or the drafting of regulations has been purposefully left to the states, the Department must be guided and constrained by the purpose set forth in Section 9, the powers of the Department noted in Section 11, the rulemaking guidelines of Section 12, and the minimum requirements of RCRA.

It should be noted that Montana has enacted regulatory provisions under existing Title 75, chapter 10, part 2, the Solid Waste Management Act, and has sufficient coverage of hazardous waste responsibilities enabling the state to qualify for interim authorization from EPA to carry out a program in lieu of the federal RCRA hazardous waste program. This bill grants the Department authority to make additional adjustments, through rulemaking, which will bring its program affecting generators and transporters of hazardous wastes, the universe of hazardous waste, inspection and sampling, definitions, enforcement alternatives and penalties ~~for---hazardous---wastes~~ into equivalency and consistency with federal requirements.

Senate Bill 212 intends that the Department of Health and Environmental Sciences shall have authority to require by rule, in accordance with the Montana Administrative Procedure Act, that generators of hazardous wastes, prior to transportating hazardous wastes or offering them for

transport off-site, must perform certain packaging, labeling, marking and placarding of the wastes in a manner equivalent to the provisions of federal regulations contained in 40 CFR 262.30 through 262.33. The Department shall have authority under the bill to adopt rules setting penalties or fines for generators of hazardous wastes that set upper limitations which are no less than the amount of $10,000 per day, as required for final authorization under the federal program. Furthermore, Senate Bill 212 allows additional rulemaking to clarify the Department's authority to make inspections of and take samples from generators of hazardous wastes in a manner equivalent to federal inspection authority provided in Section 3007 of RCRA and federal rules promulgated under RCRA.

Under existing law, the Department has promulgated rules which define a broad spectrum of hazardous wastes (the universe of hazardous wastes) by specific listing and by characteristics; which list exclusions from the definition of hazardous waste; which define terms necessary to implement the hazardous waste program; which establish manifest requirements specifying how a hazardous waste is documented from time of generation through transport to time of disposal by the operator of a treatment, storage or disposal facility; which set recordkeeping and emergency cleanup procedures for transporters of hazardous wastes;

which establish licensure procedures and standards for operators of hazardous waste treatment storage and disposal systems; and which provide enforcement alternatives for treatment, storage and disposal facility licenses. All of the existing rules are equivalent to and consistent with the federal program established by RCRA; in many instances, EPA rules have been incorporated by reference.

Under Senate Bill 212, the Department will have authority to amend and revise these rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, which may be needed to meet changing minimum federal standards for a hazardous waste program authorized for state control under RCRA, as amended. Thus, Montana will be able to continue to maintain federal authorization for an independent hazardous waste program, equivalent to the federal program, but operated by the Department.

First adopted by the Senate Public Health Committee on the 9th day of February, 1981.

SENATE BILL NO. 212

INTRODUCED BY HAGER

BY REQUEST OF

THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROGRAM OF HAZARDOUS WASTE MANAGEMENT SEPARATE FROM THE NONHAZARDOUS SOLID WASTE MANAGEMENT PROGRAM IN MONTANA; AMENDING SECTIONS 75-10-202 THROUGH 75-10-204, 75-10-212, 75-10-214, 75-10-221, AND 75-10-232, MCA; AND REPEALING SECTIONS 75-10-211 AND 75-10-225, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-202, MCA, is amended to read:

"75-10-202. Legislative findings and policy. It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated solid waste management systems and by the improper and unregulated disposal of ~~hazardous~~ wastes. It is declared the public policy of this state to control solid waste management systems to protect the public health and safety and to conserve natural resources whenever possible."

Section 2. Section 75-10-203, MCA, is amended to read:

"75-10-203. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste ~~or-hazardous-waste~~ into or onto the land so that the solid waste ~~or--hazardous--waste~~ or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

~~(4)--"Hazardous--waste"--means-any-waste-or-combination of--wastes--of--a--solid,--liquid,--contained--gaseous,---or semisolid--form-which-may-cause-or-contribute-to-an-increase in-mortality-or-an-increase-in-serious-illness,-taking--into account--the--toxicity--of--the--waste,--its-persistence-and degradability-in-nature,-its-potential-for--assimilation--or concentration---in---tissue,--and--other--factors--that--may otherwise-cause-or-contribute-to-adverse--acute--or--chronic effects--on-the-health-of-persons-or-other-living-organisms. Hazardous-wastes-include-but-are-not-limited-to-those--which are--toxic,--radioactive,--corrosive,--flammable,-irritants, strong--sensitizers,--or--which--generate--pressure--through decomposition,--heat,--or--other-means,-excluding-wood-chips~~

REFERENCE BILL

~~and wood used for manufacturing or fuel purposes.~~

~~(5) "Hazardous waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.~~

~~(6)~~(4) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

~~(7)~~(5) "Resource recovery" means the recovery of material or energy from solid waste.

~~(8)~~(6) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(9)~~(7) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

~~(10)~~(8) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ~~hazardous wastes;~~ ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts

and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood byproducts.

~~(11)~~(9) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

~~(12)~~(10) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

~~(13)~~(11) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

~~(14)~~(12) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it ~~nonhazardous,~~ safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 3. Section 75-10-204, MCA, is amended to read:

"75-10-204. Powers and duties of department. The department shall adopt rules governing solid waste

management systems which shall include but not be limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered; and

~~(5)--procedures--and-requirements-for-the-submission-of reports-on-the-operation--and--maintenance--of--a--hazardous waste--disposal--sites-the-transport-of-hazardous-wastes-and the-generation-of-hazardous-wastes;-and~~

~~(6)~~(5) any other factors relating to the sanitary disposal or management of solid wastes."

Section 4. Section 75-10-212, MCA, is amended to read:

"75-10-212. Disposal in unauthorized area prohibited -- exception. (1) No person may dispose of solid waste or ~~transport--hazardous--waste~~ except as permitted under this part.

(2) It shall be unlawful to dump or leave any garbage,

dead animal, or other debris or refuse:

(a) in or upon any highway, road, street, or alley of this state;

(b) in or upon any public recreational property, highway, street, or alley under the control of the state of Montana or any political subdivision thereof or any officer or agent or department thereof;

(c) within 200 yards of such public highway, road, street, or alley or public recreational property;

(d) on privately owned property where hunting, fishing, or other recreation is permitted, provided this subsection shall not apply to the owner, his agents, or those disposing of debris or refuse with the owner's consent."

Section 5. Section 75-10-214, MCA, is amended to read:

"75-10-214. Exclusions -- exceptions to exclusions. (1) ~~(a)~~ This part may not be construed to prohibit a person from disposing of his own solid ~~waste, except hazardous waste,~~ upon land owned or leased by that person or covered by easement or permit as long as it does not create a nuisance or public health hazard.

~~(b)--A-person-may-dispose-of-his-own--hazardous--wastes upon--land--owned--or--leased--by--that-person-or-covered-by easement--or--permit--after--complying--with--the--licensing requirements--of-this-part-and-the-rules-adopted-to-regulate~~

~~the-disposal-or-transport-of-hazardous-wastes.~~

~~(c)~~(2) The exclusion contained in subsection (1)~~(a)~~ of this section does not apply to a division of land of 5 acres or less made after July 1, 1977, which falls within the definition of subdivision in Title 76, chapter 4, part 1, or the Montana Subdivision and Platting Act in Title 76, chapter 3.

~~(2)--The-licensing-requirements-of--this--part--do--not apply--to--the-transportation-of-marketable-hazardous-wastes to-a-manufacturing-or-processing-center.~~"

Section 6. Section 75-10-221, MCA, is amended to read:

"75-10-221. License required -- application. (1) Except as provided in 75-10-214, no person may dispose of solid waste or ~~hazardous--waste,~~ operate a solid waste management system~~,--or--transport-hazardous-waste~~ without a license from the department.

(2) The department shall provide application forms for a license as provided in this part.

(3) The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require."

Section 7. Section 75-10-232, MCA, is amended to read:

"75-10-232. Penalty for violations. (1) ~~(a)~~ A person

violating this part or regulations prescribed by the department under this part, except 75-10-212(2), is guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $500.

~~(b)--A---person--who--stores,--treats,--transports,--or disposes-of-a-hazardous-waste-in-violation-of-this--part,--a rule--adopted-as-authorized-by-this-part,-or-an-order-issued as-provided-in-this-part-is-subject-to-a--civil--penalty--of not-more-than-$25,000.~~

(2) Each day upon which a violation occurs is a separate violation."

NEW SECTION. Section 8. Short title. [Section 8 through 28] shall be known and may be cited as the "Montana Hazardous Waste Act".

NEW SECTION. Section 9. Findings and purpose. (1) The legislature finds that the safe and proper management of hazardous wastes, the permitting of hazardous waste facilities, and the siting of such facilities are environmental issues that should properly be addressed and controlled by the state rather than by the federal government.

(2) It is the purpose of [sections 8 through 28] and it is the policy of this state to protect the public health and safety, the health of living organisms, and the environment from the effects of the improper, inadequate, or

unsound management of hazardous wastes; to establish a program of regulation over the generation, storage, transportation, treatment, and disposal of hazardous wastes; to assure the safe and adequate management of hazardous wastes within this state; and to authorize the department to adopt, administer, and enforce a hazardous waste program pursuant to the federal Resource Conservation and Recovery Act of 1976, (42 U.S.C. 6901 - 6987), as amended.

NEW SECTION. Section 10. Definitions. Unless the context requires otherwise, in [sections 8 through 28] the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any hazardous waste into or onto the land or water so that the hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(4) "Facility" or "hazardous waste management facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for

treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units.

(5) "Generation" means the act or process of producing waste material.

(6) "Generator" means any person, by site, whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation under [sections 8 through 28].

(7) (a) "Hazardous waste" means a waste or combination of wastes that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may:

(i) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(ii) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed.

~~(b) Hazardous~~ EXCEPT AS PROVIDED IN (c), HAZARDOUS ~~wastes include, but are not limited to, those wastes which are ignitable, corrosive, reactive, toxic, radioactive, or infectious.~~

~~(c)~~(B) HAZARDOUS WASTES DO NOT INCLUDE THOSE SUBSTANCES GOVERNED BY TITLE 82, CHAPTER 4, PART 2.

(8) "Hazardous waste management" means the management

of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(9) "Manifest" means the shipping document originated and signed by the generator and which is used to identify the hazardous waste, its quantity, origin, and destination during its transportation.

(10) "Person" means the United States, an individual, firm, trust, estate, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(11) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(12) "Transportation" means the movement of hazardous wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(13) "Transporter" means a person engaged in the offsite transportation of hazardous waste by air, rail, highway, or water.

(14) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any

hazardous waste so as to neutralize the waste or so as to render it nonhazardous, safer for transportation, amenable for recovery, amenable for storage, or reduced in volume.

NEW SECTION. Section 11. Powers of department. (1) The department may:

(a) administer and enforce the provisions of [sections 8 through 28], rules implementing [sections 8 through 28], and orders and permits issued pursuant to [sections 8 through 28];

(b) conduct and publish studies on hazardous wastes and hazardous waste management;

(c) initiate, conduct, and support research, demonstration projects, and investigation, as its resources may allow, and coordinate state agency research programs pertaining to hazardous waste management;

(d) accept and administer grants from the federal government and from other sources, public and private.

(2) The department shall integrate all provisions of [sections 8 through 28] with other laws administered by the department to avoid unnecessary duplication. Furthermore, the department shall coordinate its activities under [sections 8 through 28] with the program administered by the department of agriculture under the Montana Pesticides Act, the programs administered by the department of state lands related to mining and mine reclamation, the program

administered by the department of public service regulation related to hazardous material transportation, and provisions of the Montana Major Facility Siting Act administered by the department of natural resources and conservation. Such integration and coordination shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of [sections 8 through 28] and the other laws referred to in this section.

NEW SECTION. Section 12. Administrative rules. The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(1) identification and classification of those hazardous wastes subject to regulation and those that are not;

(2) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(3) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(4) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities and the assessment of permit fees for these facilities;

(5) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and

recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(6) requirements for training of facility personnel and for financial assurance of facility owners and operators;

(7) requirements for registration of generators and transporters; and

(8) other rules which are necessary to obtain and maintain authorization under the federal program, EXCEPT THAT THE DEPARTMENT MAY NOT ADOPT RULES UNDER [SECTIONS 8 THROUGH 28] THAT ARE MORE RESTRICTIVE THAN THOSE PROMULGATED BY THE FEDERAL GOVERNMENT UNDER THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, AS AMENDED.

NEW SECTION. Section 13. Permits. (1) No person may construct or operate a hazardous waste management facility without first obtaining a permit from the department for such facility, except that the department may, by rule, prescribe conditions under which specified hazardous wastes or specified quantities of hazardous waste may be disposed of at solid waste disposal sites licensed by the department pursuant to Title 75, chapter 10, part 2.

(2) Any person who wishes to construct or operate a hazardous waste management facility shall apply to the department for a permit on forms provided by the department. An application must contain, at a minimum, the name and

business address of the applicant, the location of the proposed facility, a plan of operation and maintenance, and a description of pertinent site characteristics.

(3) A permit may be issued for a period specified by the department and shall be subject to renewal by the department upon a showing that the facility has been operated in accordance with the terms of the permit and the rules applicable to such facility and in compliance with the provisions of [sections 8 through 28] and any applicable order of the board or department.

(4) Any permit issued is subject to revocation by the department for failure of the permittee to comply with the terms and conditions of the permit, the department rules, an order of the board or the department, or the provisions of [sections 8 through 28]. Any person who is denied a permit by the department or who has such permit revoked or modified shall be afforded an opportunity for a hearing before the board upon written application made within 30 days after service of notice of such denial, revocation, or modification by mail. Service by mail is complete upon mailing.

(5) Notwithstanding any other provisions of [sections 8 through 28], the department may, in the event of an imminent and substantial danger to public health or the environment, issue a temporary emergency permit to any

person for treatment, storage, or disposal of hazardous waste or to any facility to handle hazardous waste not covered by the existing facility permit. Such emergency permits may be oral or written, may not exceed 90 days in duration, and may be terminated by the department at any time prior to 90 days.

(6) The department may, as it considers appropriate, grant permits by rule to classes or categories of hazardous waste management facilities where the facility owner or operator is already licensed or permitted by the department pursuant to other state environmental statutes or where an interim period exists until final administrative disposition of a permit application is made.

NEW SECTION. Section 14. Concurrent permit and major facility siting decisions. If it is determined that an application for a certificate under the Montana Major Facility Siting Act, Title 75, chapter 20, will result in the generation, transportation, storage, or disposal of hazardous wastes as defined in [section 10], the department shall conduct its review under the provisions of [sections 8 through 28] concurrently with the studies of air and water quality conducted under the provisions of the Montana Major Facility Siting Act. A decision to grant or deny a permit for the treatment, storage, or disposal of hazardous wastes under the provisions of [section 13] is appealable

concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the Montana Major Facility Siting Act. If the initial permit has been granted as specified in this section, all renewals or modifications of a permit or enforcement actions concerning alleged violations of the permit and the provisions of [sections 8 through 28] shall be conducted pursuant to the procedures and enforcement provisions established in [sections 8 through 28].

NEW SECTION. Section 15. Variances -- renewals. (1) A person who is a generator or transporter of hazardous wastes or who owns or operates a hazardous waste management facility may apply to the board for a variance or partial variance from the application of or compliance with any requirement of [sections 8 through 28] or any rule adopted under [sections 8 through 28]. The board may grant a variance or partial variance if it finds that:

(a) the applicant's actions or proposed actions regarding generation, transportation, treatment, storage, or disposal of hazardous wastes do not constitute a danger to public health or safety or cause substantially adverse environmental effects; and

(b) the application of or compliance with the requirement or rule would produce unreasonable hardship

without equal or greater benefits to the public.

(2) No variance or partial variance may be granted except after public hearing on due notice and until the board has considered the relative interests of the applicant, other persons specifically affected, and the general public.

(3) No variance or partial variance may be granted for a period to exceed 1 year, but the variance or partial variance may be renewed for like periods if no complaint is made to the board because of it or if, after the complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. An application for renewal shall be made in the manner and upon such notice as specified in rules promulgated under [sections 8 through 28]. A renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (1).

(4) A variance, partial variance, or renewal thereof is not a right of the applicant or holder thereof but shall be granted at the discretion of the board. However, a person adversely affected by a variance, partial variance, or renewal granted by the board may obtain judicial review thereof as provided by the judicial review of contested case

provisions of the Montana Administrative Procedure Act.

(5) Nothing in this section and no variance, partial variance, or renewal granted pursuant to this section may be construed to prevent or limit the application of the emergency provisions and procedures of [section 22].

(6) Under no conditions may a variance be granted by the board that would result in a less stringent requirement or degree of control than would be imposed by the applicable federal regulations adopted under the federal Resource Conservation and Recovery Act.

NEW SECTION. Section 16. Compliance monitoring and reporting. The department may, as a condition of a permit, require the owner or operator of a facility to install equipment, collect and analyze samples, and maintain records in order to monitor and demonstrate compliance with [sections 8 through 28], rules adopted under [sections 8 through 28], any order of the board or department, and permit conditions. The department may require the owner or operator of a facility to submit reports on such compliance monitoring activities, including notice to the department of any noncompliance with permit conditions, rules adopted under [sections 8 through 28], the provisions of [sections 8 through 28], or any orders of the department or board.

NEW SECTION. Section 17. Inspections -- sampling. (1) An employee or agent of the department, at any reasonable

time and upon presentation of credentials, may enter upon and inspect any property, premises, or place at which hazardous wastes are or have been generated, stored, treated, disposed of, or loaded for transportation or any property, premises, or place at which records pertinent to such hazardous waste activities are maintained. The employee or agent of the department may have access to and may copy any records relating to such hazardous wastes for the purposes of developing rules under [sections 8 through 28] or enforcing the provisions of [sections 8 through 28], rules adopted under [sections 8 through 28], or a permit or an order issued under [sections 8 through 28].

(2) In the course of an inspection under this section, the employee or agent of the department may take samples of any wastes, including samples from any vehicle in which wastes are transported, or samples of any containers or labeling for such wastes. If the employee or agent of the department takes a sample of any hazardous waste or suspected hazardous waste he shall, prior to leaving the premises, give to the owner, operator, or agent in charge a receipt describing the sample taken and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis must be furnished to the owner, operator, or agent in charge.

NEW SECTION. Section 18. Hazardous waste site inventory. (1) The department is authorized to conduct an inventory of sites and locations in the state where hazardous wastes have been stored or disposed of at any time.

(2) If the department determines that the presence of a hazardous waste or the release of the waste or any waste constituent at any such site may present a substantial hazard to public health or the environment, it may issue an order requiring the owner or operator of the facility or site to conduct reasonable monitoring, testing, analysis, and reporting with respect to the site in order to ascertain the nature and extent of the hazard.

(3) An order issued under subsection (2) must require that the person to whom the order is issued submit to the department within 30 days a proposal for carrying out the required monitoring, testing, analysis, and reporting.

(4) If the department determines that no owner or operator is able to conduct monitoring, testing, and analysis in a satisfactory manner, the department may conduct such activities.

(5) For the purposes of carrying out this section, the department may exercise the powers set forth in [section 17].

NEW SECTION. Section 19. State hazardous waste

facilities. The department may, if it considers such action to be necessary, establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes. The department may acquire interests in real property by gift, purchase, lease, or other means in order to develop any such facility. Such a facility may be operated and maintained by the department directly or through agreement with public or private persons. A state facility must meet all applicable requirements for a hazardous waste management facility under [sections 8 through 28].

NEW SECTION. Section 20. Administrative enforcement. (1) When the department believes that a violation of [sections 8 through 28], a rule adopted under [it], or a permit provision has occurred, it may serve written notice of the violation by CERTIFIED mail on the alleged violator or his agent. The notice must specify the provision of [sections 8 through 28], the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail

is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under [section 21], [section 24], or [section 25].

(4) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

NEW SECTION. Section 21. Injunctions. The department may institute and maintain in the name of the state actions for injunctive relief as provided in Title 27, chapter 19, MCA, to:

(1) immediately restrain any person from engaging in

any unauthorized activity which is endangering or causing damage to public health or the environment; or

(2) enjoin a violation of [sections 8 through 28], a rule adopted under [it], an order of the department or the board, or a permit provision without the necessity of prior revocation of the permit.

NEW SECTION. Section 22. Imminent hazard. Upon receipt of evidence that the handling, storage, treatment, transportation, or disposal of any hazardous waste may present an imminent and substantial danger to public health or the environment, the department may commence legal proceedings to immediately restrain or enjoin any person contributing to such handling, storage, treatment, transportation, or disposal from engaging in such activities or take such other action as may be necessary.

NEW SECTION. Section 23. Cleanup orders. The department may issue a cleanup order to any person who has discharged, deposited, or spilled any hazardous waste into or onto any land or water in an unlawful or unapproved manner or who has discharged, deposited, or spilled any material or substance into or onto any land or water so as to result in unlawful or unapproved hazardous waste disposal. The order shall direct the person to clean up and remove the waste, treat it so as to render it nonhazardous, or to take such other actions as may be considered

reasonable by the department.

NEW SECTION. Section 24. Civil penalties. (1) Any person who violates any provision of [sections 8 through 28], a rule adopted under [it], an order of the department or the board, or a permit is subject to a civil penalty not to exceed $10,000. Each day of violation constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. Any civil penalty collected under this section is in lieu of the criminal penalty provided for in [section 25].

(3) Action under this section does not bar enforcement of [sections 8 through 28], rules adopted under [it], orders of the department or the board, or permits by injunction or other appropriate remedy.

(4) Money collected under this section shall be deposited in the state general fund.

NEW SECTION. Section 25. Criminal penalties. (1) Any person who knowingly transports any hazardous waste to an unpermitted facility; who treats, stores, or disposes of hazardous waste without a permit; or who makes any false

statement or representation in any application, label, manifest, record, report, permit, or other document filed or maintained as required by the provisions of [sections 8 through 28] or rules made under [it] is subject to a fine ~~of not less than~~ NOT TO EXCEED $10,000 for each violation or imprisonment ~~for no less than~~ NOT TO EXCEED 6 months, or both. A PERSON CONVICTED FOR A VIOLATION OF THIS SECTION AFTER A FIRST CONVICTION UNDER THIS SECTION IS SUBJECT TO A FINE NOT TO EXCEED $20,000 FOR EACH VIOLATION OR IMPRISONMENT NOT TO EXCEED 1 YEAR, OR BOTH. Each day of violation constitutes a separate violation.

(2) Action under this section does not bar enforcement of [sections 8 through 28], rules made under [it], orders of the department or the board, or permits by injunction or other appropriate remedy.

(3) Money collected under this section shall be deposited in the state general fund.

NEW SECTION. Section 26. Department designated agency for federal program participation -- interstate cooperation. (1) The department is designated as the official agency for the state for all purposes of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 through 6987), as amended, and for the purpose of such other state or federal legislation as has or may be enacted after [the effective date of this act] to assist in the management

of hazardous wastes.

(2) The legislature of this state encourages cooperative activities by the department with other states for the improved management of hazardous wastes and, so far as is practicable, encourages the adoption of uniform state laws relating to the management of hazardous wastes and compacts between this and other states for the improved management of hazardous wastes. The department may enter into agreements with the responsible authorities of the United States and of other states, subject to approval by the governor, relative to policies, methods, means, and procedures to be employed in the management of hazardous wastes not inconsistent with the provisions of [sections 8 through 28] and may carry out the agreements.

NEW SECTION. Section 27. Venue for legal proceedings. All legal proceedings affecting hazardous waste management facilities in the state shall be brought in the county in which the facility is located.

NEW SECTION. Section 28. Construction in event of conflict -- remedies cumulative. (1) The provisions of [sections 8 through 28] and rules promulgated pursuant to [it] govern if they conflict with other provisions of Montana law or any action taken by the department under such provisions.

(2) The remedies provided for in [sections 8 through

28] are cumulative with other remedies provided by law.

Section 29. Existing rules, orders, permits, legal proceedings. (1) All existing rules of the department not inconsistent with the provisions of this act relating to subjects embraced within this act remain in full force and effect until expressly repealed, amended, or superseded by the department.

(2) All orders entered, permits granted, and pending legal proceedings instituted by the department relating to subjects embraced within this act remain unimpaired and in full force and effect until superseded by actions taken by the department under this act.

Section 30. Repealer. Sections 75-10-211 and 75-10-225, MCA, are repealed.

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